

MILFORD CITY COUNCIL
MINUTES OF MEETING
August 11, 2008

On August 11, 2008, the City Council of the City of Milford held a Public Comment Session prior to the commencement of the official City of Milford Council Meeting to allow the public to comment about issues of interest that impact the City of Milford.

PRESIDING: Mayor Daniel Marabello

IN ATTENDANCE: Councilpersons Irvin Ambrose, Michael Spillane, John Workman, Clifford Crouch, Owen Brooks, Jr. and Katrina Wilson

ALSO: City Manager David Baird, Police Chief Keith Hudson and City Clerk/Recorder Terri Hudson

COUNSEL: City Solicitor Timothy Willard

Mayor Marabello declared the Public Comment Session open at 7:15 p.m.

Paul Goldstein of 15 West Thrush Drive, Meadows at Shawnee, brought to councils' attention the problem with the current IS-IM Ordinance. He stated the planning commission voted on the institutional overlay without an R-8 component. Somehow, the ordinance was amended and the R-8 component was added at the time it was presented to city council. As a result, city council voted on incorrect information. It was discussed at that time and approved to allow an institution to build an R-8 development instead of building an institution which was the intent of the ordinance.

Mr. Goldstein explained that R-8 allows a developer to build eight houses or sixteen townhouses. His personal opinion is Milford does not need more land with sixteen houses to an acre. He emphasized that because council had incorrect information, in December of 2007, Planning Chairman Randy Marvel came to council with a recommendation from the planning board that it be changed to R-2 which allows five houses or ten townhouses. One of the objections discussed was that the Isaacs property came into the city with a zoning that did not require institutional and instead allowed sixteen townhouses.

He said that when the builder started out, he wanted to be annexed. At that time, there was no institutional overlay. When he realized there was a discussion about an institutional zone, he backed off and requested his application temporarily not proceed. Several months later, he came back with a new proposal that included an institutional overlay with the sixteen townhouses to the acre.

He said it was approved but not by the required vote of four members of council. From what he has read in the newspaper, it will be brought up again for another vote to clear the air in order to prevent any lawsuits against the city.

Mr. Goldstein said he thinks that council needs to realize, as the city attorney stated at that December meeting, the city has the power and authority to change an ordinance. The attorney said that any ordinance they change is not retroactive and applies to everyone unless they have started construction or have their permits. No work has been done in this case.

Therefore, it appears to Mr. Goldstein the city has the right to change an ordinance. He said council can either leave it as it is and allow sixteen townhouses to the acre. But if that happens, if he were adjacent property owners, he would request a zoning change to an institutional overlay to allow an R-3, R-2 or R-1. We would only have one zone which would allow anything.

He recommends that council change the institutional overlay to an R-2 which gives the builders an opportunity to build ten townhouses or five houses to the acre.

Howard Webb of 5536 Cedar Neck Road then spoke stating that at one of the meetings this month, there was a dialogue between council and City Planner Norris about how to count wetlands and drainage in regard to buildable acreage.

Mr. Webb said he was pleased there was a consensus that it should not count as buildable acres which was a real breath

of quality. The citizens of Milford should be proud.

He stated that later tonight, council will revisit one of the ordinances that could use a shot of this fresh quality. The institutional service and institutional medical have a weakness within a weakness. An R-8 provision counts wetlands and drainage as buildable acreage. Mr. Webb feels this is contrary to the thoughts presented last month and does not ring of quality.

He said the other part of R-8 is automatic. He said it is like having a horse named quality and no door on the barn. He said if you make the residential use a conditional use, that could be a door. However, the way it is now is not good for Milford.

With no other person signed up, Mayor Marabello closed the Public Comment Session at 7:20 p.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Terri K. Hudson". The signature is written in black ink and is positioned above the typed name.

Terri K. Hudson, CMC
City Clerk/Recorder

MILFORD CITY COUNCIL
MINUTES OF MEETING
August 11, 2008

The Regular Monthly Meeting of Milford City Council was held in the Meeting Room of the Delaware Rural Water Association Facility at 210 Vickers Drive, Milford, Delaware on Monday, August 11, 2008.

PRESIDING: Mayor Daniel Marabello

IN ATTENDANCE: Councilpersons Irvin Ambrose, Michael Spillane, John Workman, Clifford Crouch, Owen Brooks, Jr. and Katrina Wilson

ALSO: City Manager David Baird, Police Chief Keith Hudson and City Clerk/Recorder Terri Hudson

COUNSEL: City Solicitor Timothy Willard

Mayor Marabello called the Monthly Meeting to order at 7:30 p.m.

INVOCATION & PLEDGE OF ALLEGIANCE

Following the Pledge of Allegiance, Councilwoman Wilson gave the invocation.

APPROVAL OF MINUTES

Mr. Crouch moved for approval of the July 14, 2008 minutes as submitted with Mr. Workman seconding. Motion carried with no one opposed.

RECOGNITION

None.

MONTHLY POLICE REPORT

Mr. Workman commended Chief Hudson for providing the additional information of the department's activities. He feels this has given new insight into their duties and responsibilities beyond the scope of their daily work.

Mayor Marabello hopes the decrease in DWI arrests this month is an encouraging sign that people are being more responsible.

Ms. Wilson moved for approval of the monthly police report submitted by Chief Hudson, seconded by Mr. Workman. Motion carried.

CITY MANAGER REPORT

The following report was submitted by City Manager Baird:

Southeast Front Street Improvements

The City is continuing to work with Davis, Bowen & Friedel on the design of sidewalk and road improvements on S.E. Front Street from Walnut Street to Rehoboth Boulevard. The preliminary design for the project will be presented to City Council in the coming weeks for discussion regarding the financing of the proposed improvements.

Comprehensive Land Use Plan Update

Public Meetings on the City's Land Use Plan will be held by the Planning Commission on Tuesday, August 19th at 7:00 p.m. at the Delaware Rural Water Association Building. The proposed plan will be considered part of the State's PLUS review on September 3, 2008.

Independence Commons

The City will be offering 15 lots for sale in the Independence Commons Business Park. The lots are for owner-occupied businesses and one-acre lots beginning at \$160,000 per acre. Additional information on the sale of lots will be made available in the coming weeks.

Recycling

The City is experiencing an increase of residents signing up for the curbside recycling program with 30 new signups since July 1st. Many new customers are citing the brochures that were published by the City as to what triggered them to sign up for the service. In addition, many existing participants in the recycling program are requesting second containers in anticipation of excess recycling with the biweekly collection.

City of Milford/Delmarva Power Interconnection Agreement

DEMEC and DPL are finalizing the interconnection agreement between the two parties. Once this agreement is finalized, DPL will enter into agreement with each individual DEMEC member to develop a specific interconnect agreement between DPL and Milford. In light of the City's current standing, DEMEC has requested DPL proceed with completing Milford's agreement first so that the City can proceed with our plans.

Mr. Baird also reported that council will have to decide if the sidewalk project will be funded by the city or in partnership with the residents in accordance with the Sidewalk Ordinance. Additional information will be provided over the next couple of weeks.

He also announced Milford will host the Sussex County Association of Towns Meeting (SCAT) at Milford Senior Center on Wednesday, September 3, 2008 beginning at 6:00 p.m.

Discussions are ongoing with Carlisle Fire Company regarding the possibility of using their fire sirens for additional emergency notification.

The city manager recalled the 5.9% increase in electric rates from \$83 per megawatt to \$88. The most recent July bill came in at \$114 per megawatt which is in line with what DEMEC President Pat McCullar reported during the previous workshop. He plans to meet with our rate consultant and Mr. McCullar this week on how best to proceed. At this point, he is unsure what increase will be passed on to our customers. That will be determined later this week.

The furnishings are being finalized for the city hall project. Once that is completed, council meetings will resume downtown.

Mr. Ambrose asked that utility lines be considered for underground installation in the Southeast Front Street area. He feels it would be more aesthetically pleasing to the character of the historic shipbuilding district. Mr. Baird explained the problem with burying the utilities is the cost associated with the cable and telephone lines. He does not foresee a problem with the city utilities.

Mr. Baird confirmed we are receiving one to two calls a week from persons interested in purchasing lots in our business park.

Mr. Workman moved to accept the city manager's report, seconded by Mr. Crouch. Motion carried.

COMMITTEE REPORTS

Annexation Committee Report/Lynn and Karen McColley Petition

Annexation Committee Chairman Crouch presented the following report to council:

An Annexation Committee Hearing was held in the meeting room of Rural Water Association on July 24, 2008 to consider the annexation request for lands described as:

Property owner: Lynn A. & Karen K. McColley

Tax map number: MD-00-174.00-02-51.00
Size: 10 +/- acres
Existing zoning: RS-1 Proposed zoning: C-3

Tax map number: MD-00-174.00-02-53.00
Size: 1 +/- acres
Existing zoning: RS-1 Proposed zoning: C-3

Tax map number: MD-00-174.00-02-49.01
Size: 1 +/- acres
Existing zoning: RS-1 Proposed zoning: R-2

Tax map number: MD-00-174.00-02-49.00
Size: 14 +/- acres
Existing zoning: RS-1 Proposed zoning: R-2

The Annexation Committee of the City of Milford City Council recommends APPROVAL of the application, with the following comments:

- 1. Annexation is consistent with the "Comprehensive Land Use Plan".*
- 2. Property is contiguous to existing City Limits.*
- 3. Any changes to the property would be subject to review by the City of Milford Planning Commission and/or City Council.*
- 4. Property will be served by City Electric, Sewer, and Water.*
- 5. The City will benefit through additional revenues, including taxes and the sale of water, sewer and electric.*
- 6. Upon Council approval, a Municipal Annexation Plan of Services will be submitted to the Office of State Planning for their approval.*

The property should be annexed with the following zoning classification: R-2.

Mr. Crouch confirmed that even though the McColleys were requesting C-3 zoning on two parcels, it is the recommendation of the annexation committee to annex the entire site under the R-2 zone.

Mr. Crouch moved to proceed with the annexation of the McColley annexation, seconded by Ms. Wilson. Motion carried by unanimous roll call vote.

COMMUNICATIONS

All communications were included in the packet.

UNFINISHED BUSINESS

Milford Planning Commissioner Appointments

Mayor Marabello recalled that we are trying to bring the planning commission appointments and terms into conformity with the charter and code. As a result, commissioners will be appointed for one, two or three year terms. Members of the commission will serve staggered terms, with one third of the members' terms expiring every year.

He reported this will be discussed during the executive session later this evening. If a decision is made, council will return to open session and make the appointments.

Mr. Crouch stated he has not seen the new applications. The mayor was under the impression that he was to return to council with recommendations after the applications were reviewed.

Mr. Workman agreed the applications were to be reviewed by the mayor, city manager and planning chairman and that information brought back to council. He recalled there was discussion the applicants would be ranked as well. Mr. Brooks said he reviewed those provided at the last meeting, but pointed out there were additional applications submitted that council has not seen.

Mr. Crouch also thought that any applicants not qualified would be removed. After a discussion of the applicants, he thought council would make a final decision based on the recommendations.

Mr. Baird said either way is appropriate. Should council be prepared to make a decision tonight, that vote can be taken. If not, it can be deferred until the following meeting.

Mr. Workman confirmed the commission needs to be in place by September 1st; Mr. Baird said that date can be adjusted if necessary.

Mayor Marabello advised that his current recommendation includes two commissioners from three wards and three commissioners from one ward. Mr. Spillane asked if the mayor will consult with the council representatives individually on the applicants from their ward or if council will be making comments as a group. The mayor reiterated he will supply council with his recommendations and in turn, council will make a final decision including the length of term for each commissioner.

The item will be placed on the August 25th agenda.

NEW BUSINESS

Adoption of Fiscal Year 2008-2009 Tax Warrant

Mr. Baird presented the following tax warrant for adoption by city council:

GREETINGS:

The Charter of the City of Milford provides the following:

"Article X, Section 10.11: Attached to said tax list shall be a warrant, under the Seal of the City of Milford, Signed by the Mayor and Attested to by the Secretary, commanding the City Manager to make collection of Taxes as stated in the Tax Lists."

THEREFORE, YOU, THE CITY MANAGER, DULY APPOINTED BY THE COUNCIL OF THE CITY OF MILFORD, ARE HEREBY COMMANDED TO COLLECT THE TAXES AS LEVIED IN THE FOUR WARDS AS FOLLOWS:

<i>Assessed Per Billing Register</i>	\$748,726,785.00
<i>Exemptions</i>	[120,200,200.00]
TOTAL ASSESSED VALUE	\$628,526,585.00
	<u> x .0046</u>
ESTIMATED TAX PER PROPERTY VALUES	\$2,891,222.29
 <i>Senior Citizen Discount</i>	 [7,452.00]
TOTAL TAXABLE (Fiscal Year 2008-2009)	\$2,884,770.29

Mr. Brooks feels the senior citizen discount is low this year. Mr. Baird explained the biggest drawback to this discount are the income guidelines which are extremely low. The potential of raising those numbers has been discussed to make more seniors eligible. He stated that would increase the number but emphasized the difficulty is in predicting how much that number would go up.

Mr. Ambrose advised that he has discussed increasing the income guidelines for qualification several times. He agrees it should be considered but agrees the problem is how to estimate how many more people would qualify. However, he recommends this body review this issue so that it could be in place for the next tax cycling. The deadline for the applications is around the first of June so it would need to be in place by early 2009.

The rates were last considered in 2006 when comparisons were done to other municipalities and Kent and Sussex county guidelines.

Mayor Marabello does not feel that all seniors are aware of this program. Mr. Brooks advised it was included on the utility bills this year.

Mr. Ambrose moved to adopt the Fiscal Year 2008-2009 Tax Warrant, seconded by Mr. Crouch. Motion carried by unanimous roll call vote.

Agreement/Downtown Milford & City of Milford

Mr. Baird presented the following agreement:

AGREEMENT

Agreement, dated this 11th day of August 2008, by and between The City of Milford, a municipal corporation of the State of Delaware, hereinafter the "CITY".

-AND-

Downtown Milford Inc., a Delaware nonprofit corporation, hereinafter referred to as "DMI".

WHEREAS, The City of Milford and Downtown Milford, Incorporated currently partner on projects that benefit the Downtown Milford area, and;

WHEREAS, Milford has recently been recognized as a Main Street Community with DMI serving as the lead organization for this designation, and;

WHEREAS, it is the desire of both parties to continue this partnership for the benefit of the Milford community.

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained, the parties hereto agree as follows:

The CITY will provide a total of \$175,000 to DMI payable in equal installments of \$35,000 per year. The annual distribution will be payable on or before October 1 of each year beginning in 2008 and continuing until October 1, 2012.*

Funding from the CITY shall be utilized for the following purposes:

Assistance with the Main Street program as orchestrated by DMI.

Administrative costs incurred by DMI's director on future CITY and DMI Streetscape projects.

Other uses that allow DMI to continue its mission to strengthen the economic vitality of the central business district in Milford.

The CITY will not have operational control over DMI staff or operating policies. The DMI board will continue to guide the direction of any staff and the program's ongoing revitalization efforts.

This agreement may be extended should the CITY provide funding to DMI in future budget years.

The parties have incorporated in this Agreement their entire understanding. No modification or waiver of any terms of this Agreement shall be valid during the term of this agreement unless mutually modified by both parties in writing.

*Revised 08/14/08 after a previous error was corrected as was verified in the City of Milford FY2008-09 Budget.

Mr. Baird advised that when DMI received its Main Street designation, a component of the designation was for support of the local government in the way of financial, organization and community support. He developed the agreement to address the commitment.

DMI President Mitch Crane stated that on behalf of Downtown Milford, Incorporated, he appreciates the opportunity to speak as well as the city's willingness to allocate the funds. He stated that everyone knows taxpayers' dollars are very precious and should not be spent unless it is a necessary appropriation.

Mr. Crane feels this is a necessary appropriation as the Downtown is in the beginning of a process of revitalization. Revitalization that is being hindered by the state of the national economy where it is hard for people to open businesses besides being able to stay in business. The best way to do that is through a downtown organization or Main Street organization such as DMI.

He explained the main street designation requires a commitment from the municipality emphasizing the financial commitment is an important element. The main source of their funding in the past was a grant from a national institution that is now close to bankruptcy. As a result, those funds have ended and the city money only makes up for that loss.

Mr. Crane explained that part of the Main Street application, which the city signed off on, was a five-year funding commitment. Though this agreement is a one year commitment, he wants to remind council the Main Street designation was received based on a five-year commitment which is necessary to get off the ground financially.

He also pointed out that DMI is able to obtain grants for projects that the city is ineligible to obtain from governmental agencies. A recent \$18,000 grant for a kiosk was obtained through DMI that the city would not have gotten otherwise. There should be an additional appropriation of \$12,000 this fall for signage to direct people into the historic downtown and riverwalk area. That is also money the city was ineligible to obtain.

The agreement also mentions Streetscape. Mr. Crane explained the Streetscape Project is necessary in order to enhance the rest of the downtown historic district. Part of the Streetscape enhancement is the burying of utility lines. That is why that project has been ongoing for a number of years and the reason the city wrote letters to our legislators. Our legislators were able to preserve a \$250,000 appropriation needed to pay other budget problems of the state this past June. This is a partnership and the way it works best is for the funding and the project to go through Downtown Milford, Incorporated in order to take advantage of what a nonprofit can do that a city cannot do.

Mr. Crane hopes that as this project starts, there will be more coordination and discussion between the city and Downtown Milford, Incorporated to design the Northeast Front Street Streetscapes properly so the expansion can extend to the Riverwalk Shopping Center.

He hopes the funding will be approved this year as well as the next four years.

Mr. Workman moved for approval of the DMI and City of Milford agreement for the next five years, seconded by Mr. Ambrose. Motion carried by unanimous roll call vote.

Council authorized Mr. Baird to make those changes discussed this evening and to present to DMI for execution (amended agreement included).

Mr. Ambrose confirmed that all discussions with DMI involved the five-year commitment and noted the allocation was for \$35,000 (original agreement amended to reflect correct funding).

Mr. Crouch asked that in the future, Mr. Baird outline the length of any financial commitment as council discusses in addition to the amount agreed upon. He referred to the library agreement which is a similar situation and asked that include the same language.

Marshall Pond Ownership/Steven Billings

Mayor Marabello advised that there is a dispute over the ownership of Marshall Pond.

City Manager Baird then reported that a few months ago, he received a call from Steven Billings regarding the status of the ownership of Marshall Pond. Mr. Billings was looking for some direction on how to proceed with settling his father-in-law's estate. Until this was presented, the city was unfamiliar with the status of the ownership of the pond.

Mr. Baird stated the facts and background are being presented to council so a later decision can be made on where the city wishes to go with regard to the status of the pond.

Solicitor Willard advised he has had numerous conversations with Mr. Billings. A title search was performed in April and the Recorder of Deeds Office has done research on the matter as well. Approximately a month ago, Mr. Willard sent Mr. Baird a memo stating what was found.

Steven Billings of 22726 Cedar Beach Road advised that his father-in-law, Herman Sharp, passed away in December of 2007. When reviewing his trust, the ownership of Marshall Pond came up. He advised that Mr. Sharp's father owned land over to Marshall Street and sold Lulu M. Ross the property to build their school. Because of the question involving Marshall Pond, he went to the Recorder of Deeds at which time he found a disputed ownership. He said the City of Milford had no deed though Herman and Betty Sharp had a quick claim deed made in 1983.

Mr. Billings does not understand how the city can claim this property without a recorded deed. He has been trying to get that question answered since the end of March.

Mr. Willard explained the pond is 8.45 acres and noted there is no official deed of record for Marshalls Pond. There is the 1983 deed where Mr. Sharp did a quick claim deed which is an act where a person deeds a property to themselves.

The claim they make is an adverse possession claim which is a method of gaining title to a property by actual, open and continuous possession of over twenty years, and as a result, believe they are the owners. Based on that theory, they quick claimed it in their names. There is one other deed in 1999 when Mr. Sharp put it in trust.

The title searcher checked with the city and had some record it was the city's. The city's records now indicate it is a disputed ownership. The county record also stated it is a City of Milford disputed ownership.

Mr. Willard reported there is some stormwater that drains into the pond.

Mr. Willard recommends this be discussed in executive session in order to sort out the legal issues and possible ramifications. He said whether or not the city wants the pond is a threshold issue. If they don't, they could quick claim any interest they have and put this to rest.

One legal issue is a Delaware statute passed prior to 1983 that states you cannot take government land by adverse possession.

Mr. Willard indicated he has researched a number of cases that go back to the time of the Revolutionary War. He found many cases that involve properties which have been abandoned without title that became part of the state.

Mr. Billings said they have called the State of Delaware who refused to take responsibility for the pond or the causeway. He advised that he has replaced the board in the causeway over the past twenty to twenty-five years five or six times. The state has control over the bridge but no control over the pond.

Mr. Willard understands the Sharps claim but recommends it be discussed by council in executive session. The solicitor explained that titles are resolved by filing a quick title action in Chancery Court unless the city can agree which is why he needs to discuss the issue in executive session.

When asked if Mr. Billings wants the property, he explained the Sharp land behind it went over to the other side. Some land was sold that will be used for the new Lulu M. Ross School. The property line runs all the way over to the other side of the pond. The Sharps have five acres that run to the headwaters of Marshalls Pond. He said there are all types of wildlife living there and they want it left that way. He emphasized there will not be any development on the Sharp side of Marshall Pond because they want it kept as natural as possible.

Mr. Billings wants this cleared up because it was found in his father-in-law's trust and wants it cleared up. He said they want the property, but will not shut it down. He will not put a fence up or exclude the public from using it. Everyone can still fish in it and use the dock or take boat rides.

Mr. Crouch asked if there are other properties facing the pond; Mr. Billings said there are approximately six properties.

Mr. Billings recalled a resident on Southeast Second Street put in rirraff next to the pond. Someone called DNREC who did a deed search. The only person with a deed was Herman Sharp. As a result, Mr. Sharp was asked to sign a relief to allow the rirraff. He emphasized they did not call the City of Milford. He said if the city had a legal claim, they would have gone to the city.

Mr. Billings is familiar with state land regulations regarding adjacent properties, but not for a private pond. According to the deeds of adjacent properties on Marshall Pond, their property lines only go to the edge of the water.

Mayor Marabello said this item will be placed on an upcoming agenda to be discussed in executive session.

A.C. Schultes of Delaware, Incorporated/Change Order/Water Capital Reserve

Mr. Baird advised this work was necessary to complete the installation and obtain the appropriate water quality from Well No. 4R. The A.C. Schultes contract will be increased by \$42,073.00. He added this is over the \$166,000 previously approved. Funds are available to complete this work.

Mr. Crouch moved for approval of the A.C. Schultes Change order by 42,073.00 to be paid from Water Capital Reserve Account 202-2020-432-95.50, seconded by Mr. Ambrose. Motion carried by unanimous roll call vote.

Bid/Street Improvements Project 2008

The invitation to bid was properly advertised, sealed bids received and opened at the Public Works Facility, 180 Vickers Drive, Milford, Delaware.

The following bids were received:

Delmarva Paving	56,500
C&J Paving	39,311
Maloney's Asphalt	43,859.84
George & Lynch	48,351
Jerry's Incorporated	32,294.22

City Manager Baird advised this involves street paving work for Fisher Avenue from Southeast Front to Southeast Second, Sussex Avenue from Lakeview to Williams and Northwest Second Street from Washington to East Street. They also requested the contractors provide pricing for quantities in case the city needed additional paving work. That portion of the contract runs through the end of the calendar year on December 31st.

The recommendation is to award the contract to the low bidder, Jerry's Incorporated.

Mr. Crouch moved to award the 2008 Street Improvement Project bid to Jerry's Incorporated in the amount of \$32,294.22, seconded by Mr. Workman. Motion carried by unanimous roll call vote.

Introduction of Ordinance 2008-15/Amendment to Animal Code/Chapter 79

The following ordinance was introduced to council for review and comment as was discussed at the previous meeting:

An Ordinance to amend the Code of the City of Milford by deleting and repealing Chapter 79, thereof, Animals, and replacing it with a new Chapter 79, to be entitled Animals, which purpose is to protect the public health and safety of its citizens and to promote the general welfare of the citizens and animals within the City.

Ordinance 2008-15

The City of Milford hereby ordains:

Section 1.

The Code of the City of Milford is hereby amended by deleting and repealing Chapter 79, Animals, in its entirety.

Section 2.

The Code of the City of Milford is hereby amended by adding thereto a new chapter, to replace Chapter 79, hereinabove repealed, to be Chapter 79, Animals, to read as follows:

DEFINITIONS:

OWNER-person, firm, corporation, organization, or department possessing, harboring, keeping, having an interest in, or having care, custody, or control of an animal.

ANIMAL CONTROL AGENCY-agency of the state, county, municipality, or other governmental subdivision of the state which is responsible for animal control operations in its jurisdiction.

CAT COLONY-social group of cats who avoid human contact and breed with each other to create a growing population of homeless cats; cats who group together in an alley, corner of a parking lot or a grassy area.

CAREGIVER-Anyone who puts out food for feral cats.

FERAL CAT-untamed domestic cat living in the wild; unaltered cats released by owners who no longer care for them; offspring of such abandoned cat.

HORSE-DRAWN VEHICLE-carriage, wagon, cart, sled or sleigh or other device drawn by horses which has a passenger carrying capacity.

TNR Program-humane and non-lethal approach to feral cat population control; comprehensive management plan where healthy feral cats are sterilized and vaccinated, then returned to their habitat and provided with long-term care.

§ 79-1. Running at large.

It shall be unlawful for any person or persons to permit any dog or cat owned, kept, maintained or in the custody or control of such person or persons to run at large, either upon the public streets, sidewalks, highways, alleys or thoroughfares of the City of Milford or upon private property of any other person or persons.

§ 79-2. Identification tag; violations and penalties.

- A. Every person who owns, controls, harbors, possesses or keeps any dog or cat over the age of six months in the City of Milford shall procure an identification tag for said animal. Within 15 days after an animal reaches the age of six months, or within 15 days after any animal over the age of six months is acquired or brought into the city, its owner shall procure an identification tag for said animal. Any owner who fails to procure such an identification tag within the time allowed shall be subject to a fine of not less than \$25 nor more than \$300. The identification tag shall contain the name, address and telephone number of the owner of the animal.*

B. *The owner of the animal shall affix or cause to be affixed to said animal the identification tag hereinabove mentioned, and said animal shall thereafter, at any and all times, have attached to it said identification tag.*

§ 79-3. Leash required; exception.

A. *No dog, cat or other animal shall be permitted in or upon any public street, sidewalk, alley, park, parkway or other public place in the city or in or upon any property belonging to said city unless said animal is on a leash and is under the complete control of the person owning or, at the time, in possession of said animal.*

1. Exception: Feral cats that have been trapped, spayed or neutered and re-released are exempt from §79-3.(A) . Each cat would be ear-tipped, clearly identifying it as a product of the Kent County SPCA Feral Cat TNR Program.

B.. *Notwithstanding anything in this article to the contrary, no person shall be compelled to keep any dog, cat or other animal in his possession on a leash while in or upon any public street, alley, parkway or other public place in the city if, at the time, said animal is securely confined in an automobile.*

ADD:

§ 79-4. Feral Cats

A. *Individuals who choose to apprehend a feral cat running at large within the City of Milford shall have the feral cat delivered to the Kent County SPCA.*

B. *No individual will trap a feral cat off their property of record except the Kent County SPCA pursuant to specific authorization from the City of Milford Police Department.*

C. *Each feral cat colony will be registered by the caregivers with the City of Milford and/or Local Animal Control Agency, which will serve as a clearinghouse for information on current caregivers and assistance for persons found in violation of this section. A caregiver who fails to register within the time allowed shall be subject to a fine of not less than \$100 no more than \$300.*

D. *Any person or caregiver determined to be in violation of subsections (a) through (d) below, shall be in violation and may be allowed a period of time to come into compliance, or provide satisfactory evidence of working to achieve compliance.*

E. *Failure to comply in the time given will result in issuing a violation citation. Caregivers of feral cat colonies shall implement proper management and sterilization practices as follows:*

(1) Sterilize (spay/neuter) all adult cats that can be captured.

(2) Vaccinate against rabies, as required by law, all cats that can be captured.

3) Make every attempt to remove kittens from the colony before eight (8) weeks of age for domestication and placement.

(4) Make every attempt to sterilize all kittens over eight (8) weeks of age and before 5 months of age.

(5) Make every attempt to remove sick or injured cats from the colony for immediate veterinarian care or for humane euthanasia.

(6) Assure responsibility and arrangements for feeding the cat colony regularly throughout the year, including weekends, holidays and vacations.

(7) Keep feeding areas clean and orderly.

(8) Maintain secure and safe winter shelter as required in § 79-3b of this sub-part.

(9) A microchip implant and ear-tipped will be mandatory and used on feral cats in order to be identified as spayed or neutered and vaccinated member of a managed colony.

(10) The feral cat caregiver shall be vaccinated for rabies, the expense will be the responsibility of the individual or rescue group.

(11) Maintain proof of sterilization, vaccination, medical records, and implant identification for all cats. These records must be provided to the Animal Control or Law Enforcement Agency upon request.

F. Animal(s) creating a public nuisance – the designated agency/rescue group will be notified within forty-eight (48) hours of removal of any feral cats.

G. In the event the feral cat caregiver fails to comply with this section, the designated agency/rescue group will be notified within forty-eight (48) hour period before removal of any animal. The designated agency/rescue group will attempt to resolve the situation prior to removal of a cat by an enforcement agency.

ADD:

79-5. Outdoor Housing Facilities/Feral Housing

(A) Restrictions.

(1) The following categories of cats must not be kept in outdoor facilities, unless the attending veterinarian specifically approves that practice:

- (a) Cats that are not acclimated to the temperatures prevalent in the area or region where they are maintained;
- (b) Breeds of cats that cannot tolerate the prevalent temperatures of the area without stress or discomfort (such as short hair breeds in cold climates); and
- (c) Sick, infirm, aged or young cats.

(2) When their acclimation status is unknown, cats must not be kept in outdoor facilities when the ambient temperature is less than 50 degrees (F).

(3) Shelter from the elements. Outdoor facilities for cats must include one or more shelter structures that are accessible to each animal in each outdoor facility, and that are large enough to allow each animal in the shelter structure to sit, stand, vertical stretch and lie in a normal manner, and to turn about freely. It must be large enough to contain all the animals at one time. Shelters in outdoor structures for cats must contain a roof, four sides, and a floor, building surfaces in contact with animals must be impervious to moisture. Metal boxes/barrels, cars, refrigerators or freezers, and the like must not be used as shelter structures and must:

- (a) Provide the cats with adequate protection and shelter from the cold and heat;
- (b) Provide the cats with protection from the direct rays of the sun and the direct effect of wind, rain, or snow;
- (c) Be provided with a wind break and rain break at the entrance; and
- (d) Contain clean, dry, bedding material if the ambient temperature is below 50 degrees.
- (e) Additional clean, dry, bedding is required when the temperature is 35 degrees (F) or lower.

§ 79-6. (# Change) Noisy animals.

No person shall keep any animal which causes frequent or long-continued noise so as to disturb the comfort or repose of any person in the vicinity. Any violation of this section, in addition to the penalties set forth in § 79-11, is declared to be a nuisance and as such may be abated.

§ 79-7. (# Change) Appointment of Animal Control Official ~~Officer~~; Impoundment Procedure.

~~The Society for the Prevention of Cruelty to Animals of the State of Delaware, Kent County, 32 Shelter Circle, Camden, DE (KC SPCA) Chief of Police, with the concurrence of the City Manager, is authorized to appoint a person has been designated as the Animal Control Agency for the City of Milford Officer. It shall be the duty of the SPCA Animal Control Officer to apprehend any animal found in violation of the provisions of this article and to impound such animal in the city impoundment or other a suitable place. A record of the breed, color and sex of the animal and the number of its license, if any, shall be made at the time of impoundment and shall be maintained by the SPCA at the City Police Station. Not more than 24 hours after impoundment of any animal, the owner, if known or ascertainable, shall be notified. If the owner cannot be located within the prescribed time, the animal will be turned over to the Kent County Society for the Prevention of Cruelty to Animals.~~

§ 79-8. (# Change) Right of entry by Animal Control Officer Official or Designee; Impoundment.

~~Upon presentation of proper credentials, an official of the SPCA the Animal Control Officer or his duly authorized representative and/or a City of Milford Code Official or Milford Police Officer may enter upon the yards of private property in order to enforce the provisions of this article. It shall be the duty of the Animal Control Officer Official or his duly authorized representative to impound all animals over the age of six months that are untagged, as provided for in this article, or that are in or upon any private property without the permission and consent of the owner of such property or that are in or upon any public street, alley, sidewalk, park or other public place unleashed.~~

§ 79-9. (# Change) Redemption of impounded animals; costs.

~~The owner of any dog apprehended and impounded by the SPCA may reclaim said dog upon the payment of any fine and cost imposed for any violation of this chapter. Any person or persons whose animal may become the subject of capture and detention, as hereinbefore provided, may reclaim such animal by paying to the City of Milford the costs incurred by the city, but not less than the sum of \$5 for the first day or any part thereof and an additional sum of \$3 for each subsequent day of detention. Further, if the animal is of a character which requires a license under the laws of the State of Delaware and does not bear a license when impounded, proof of proper licensure must be demonstrated to the SPCA official of the place of detention prior to redemption by the owner. If proof of proper licensure cannot be demonstrated by its owner, the animal cannot be reclaimed until such time as the owner has procured a proper license.~~

REMOVE:

§ 79-7. Removal of impounded animal.

~~It shall be unlawful for any person to remove any impounded animal from the city holding area without the consent of the Animal Control Officer.~~

§ 79-10. (# Change) Obstruction of Animal Control Agency Officer.

~~No person shall willfully oppose, restrict, delay or obstruct the SPCA Animal Control Officer or his duly authorized representative in the discharge or attempt to discharge or perform any act or duty authorized or prescribed herein.~~

~~§ 79-9. Appointment of Animal Control Officer; impoundment procedure.~~

~~The Chief of Police, with the concurrence of the City Manager, is authorized to appoint a person designated as the Animal Control Officer. It shall be the duty of the Animal Control Officer to apprehend any animal found in violation of the provisions of this article and to impound such animal in the city impoundment or other suitable place. A record of the breed, color and sex of the animal and the number of its license, if any, shall be made at the time of impoundment and shall be maintained at the City Police Station. Not more than 24 hours after impoundment of any animal, the owner, if known or ascertainable, shall be notified. If the owner cannot be located within the prescribed time, the animal will be turned over to the Kent County Society for the Prevention of Cruelty to Animals.~~

§ 79-11. (# Change) Violations and penalties.

~~Any person found guilty of violating the provisions of this article shall forfeit to the City of Milford a fine of not less than \$25 but not more than \$300, plus costs of prosecution.~~

~~Unless otherwise established herein, the following fines and penalties shall apply to Article II of this chapter:~~

~~Any person found guilty of violating the provision of this article shall forfeit to the City of Milford a fine of not less than \$25 but not more than \$300, plus the costs of prosecution.~~

ARTICLE II Prohibited Animals [Adopted 8-14-1995]

§ 79-12. (# Change) *Keeping or slaughtering of certain animals within city limits.*

No person shall keep or slaughter any swine, cow, bull, sheep, goat, goose, duck, hen, rooster, turkey or like animal or other farm animal within the City of Milford unless in conformity with Chapter 230, Zoning, and properly licensed and inspected by the appropriate state agencies.

ADD:

§ 79-13. *Animals used in parades where a City of Milford Parade Permit has been issued are exempt from the provisions of this chapter.*

§ 79-14. (# Change) *Violations and penalties.*

Any person found guilty of violating the provision of this article shall forfeit to the City of Milford a fine of not less than \$100 but not more than \$500, plus the costs of prosecution.

ADD:

ARTICLE III. Horse-drawn Vehicles

§ 79-15. *The provisions of this section shall not be applicable to any person who brings into the city a horse for the purpose of providing transportation in horse-drawn vehicles carrying passengers on a fixed route under the following terms and conditions:*

- A. Each route shall be approved by the City Manager.*
- B. The horse shall not be kept or maintained within the corporate limits of the city when not being used for the purpose of providing transportation.*
- C. Horse-drawn vehicles are prohibited from all other streets and areas within the city unless specifically approved by the City Manager for providing point to point transportation for special events, including but not limited to weddings, theatrical performances and funerals.*
- D. No person shall drive or operate a horse-drawn vehicle on any day or at any time that the Chief of the Milford Police Department or his designee makes a specific determination that it would be inconsistent with other special events or public safety requirements.*

Section 3: Dates

Projected Adoption Date: August 25, 2008

Projected Effective Date: September 4, 2008

Chief Hudson advised this amendment is being requested due to an increasing number of feral cat colonies in the city. This was presented by representatives of the Kent County SPCA at the July workshop. The proposal is for the animal ordinance to include information on feral cats, carekeepers and outdoor housing. He advised some minor amendments were also added and/or changed to allow some exceptions to prohibited animals currently described in the ordinance. Though the SPCA has been the animal control authority in the city for several years, the amendment officially addresses it.

Mayor Marabello advised that final action would be taken at the September monthly meeting.

Introduction of Ordinance 2008-16/Amendment to International Building Code/Chapter 88

The following ordinance was introduced for council review and amendment:

An Ordinance to Amend the Code of the City of Milford, Chapter 88 Thereof, Entitled Building Construction the Purpose of as it Relates to Construction Documents for Commercial Structures under the International Building Code.

WHEREAS, The City repealed the 1993 BOCA Code and adopted the 2006 International Building Code (IBC) as the commercial building code in 2007; and,

WHEREAS, the 1993 BOCA Code required all construction documents to be prepared by a registered design professional; and,

WHEREAS, the 2006 IBC requires the City to take specific action should the City choose to require construction documents to be prepared by a registered design professional.

NOW, THEREFORE, THE CITY OF MILFORD HEREBY ORDAINS:

Section 1.

Section 4 of Chapter 88, Building Construction, of the Code of the City of Milford is hereby amended read as follows:

§88-4 Additions, Insertions and Changes

CHANGE: 106.1 Submittal Documents.

Construction Documents, statement of special inspections and other data shall be submitted in one or more sets with each permit application. The construction documents shall be prepared by a registered design professional where required by the statutes of the jurisdiction in which the project is to be constructed. Where special conditions exist, the building official is authorized to require additional construction documents to be prepared by a registered design professional.

Exception: ~~The building official is authorized to waive the submission of construction documents and other data not required to be prepared by a registered design professional if it is found that the nature of the work applied for is such that a review of the construction documents is not necessary to obtain compliance with this code.~~ ADD The building official is authorized to waive the requirement that construction documents be prepared by a registered design professional, if in the opinion of the building official with confirmation from the City Manager, the nature of the work is minor and the waiver of said requirement will not be detrimental to the intent of this code.

Section 2: Dates

Projected Adoption Date: August 25, 2008

Projected Effective Date: September 4, 2008

Mr. Baird advised that the 1993 BOCCA code required that all construction documents be prepared by a registered design professional in the State of Delaware. That requirement is stricken and authorizes the building official to waive the requirement that construction documents be prepared by a registered design professional, if in the opinion of the building official with confirmation from the City Manager, the nature of the work is minor. The waiver of the requirement will not be detrimental to the intent of this code.

When asked to differentiate between minor and major, Mr. Baird said that is an ongoing debate. That is the only reason the city manager became into play and why that confirmation was added.

Mr. Spillane asked if that meant a project was over a certain amount; Mr. Baird explained that was discussed though the scope of every job is different depending on the impact of the building. It was agreed the cost may be an appropriate measurement. However, it will be decided by the building official on a case-by-case situation.

Mayor Marabello announced that a final vote will be taken at the September meeting.

Review of Ordinance 2007-9/Proposed

Mayor Marabello advised that Mr. Spillane asked him to add this to the next agenda.

Mr. Spillane said he feels the voting had changed since action was taken on the IS-IM ordinances. Four votes were needed to approve any matter. He thought it should be revisited because of the 2 to 3 vote not to approve the motion. In addition, it was a hot issue at the time it was reviewed and many people were there. Also, there have been changes in the planning commission and council since the vote was taken so it needs to come back for another vote.

Mr. Crouch pointed out that council has the possibility of changing every two years. He thinks it is inappropriate that whenever a council seat changes, council should go back and reconsider something someone disagrees with. He believes the city should have some integrity when it comes to making such decisions. If not, there would be continual changes every year after the election. In this case, an amendment was presented, but because of the vote, it did not pass. Therefore, the four affirmative votes did not apply.

Mr. Spillane recommends a new vote take place so that things are on track with a correct vote.

Solicitor Willard explained that last December, an ordinance was presented to amend the IS and IM zones to remove the R-8. There was a motion to approve the removal though it failed by a vote of 2 to 3. He said if Mr. Spillane wants to reintroduce this ordinance, that can be done though there is a provision that any zoning change, regardless of whether it involves a land decision or an ordinance go change the zoning law, must wait a year. So to reintroduce it would require three-quarters of the planning commission or in this case, city council.

Mr. Willard recommends Mr. Spillane prepare a new ordinance to bring before council for introduction. They would then decide whether to send it to the planning commission which would require a super majority vote.

Mr. Brooks noted the last time it was voted, the vote was 2 to 3. He said this could result in a possible 3 to 3 vote with only six people present. He asked what would happen in that case. Mayor Marabello explained it would be denied. Mr. Willard agreed it would require four affirmative votes to pass.

Mr. Spillane asked Mr. Willard if he knows something is wrong, how long the investigation should go back and if it should go back to when the town started in order to correct things. He feels that once it is determined that something is wrong it should be corrected. In order for something to pass, four votes need to be taken.

Mr. Willard explained that in this case, the motion failed.

Mayor Marabello said that in order for this to be readdressed, Mr. Spillane must resubmit this in writing through the city solicitor so it can properly proceed.

FINANCE REPORT

Mr. Ambrose reported this is the final monthly report for Fiscal Year 2007-2008. He then reviewed disbursements, unexpended funds and electric revenues and expenditures. He advised that unexpended funds will be added to the reserve accounts.

The numbers will be finalized upon the completion of the annual audit.

Mr. Crouch moved to accept the June 2008 finance report, seconded by Mr. Workman. Motion carried.

EXECUTIVE SESSION

Mr. Crouch made a motion to go into Executive Session reference personnel matters, seconded by Mr. Brooks. Motion carried.

Mayor Marabello recessed the Council Meeting at 8:42 p.m. to go into Executive Session to conduct a discussion regarding labor negotiations.

Return to Open Session

Council returned to Open Session at 9:47 p.m.

Mr. Crouch moved to defer action on the planning commission issue discussed in Executive Session, seconded by Mr. Brooks. Motion carried.

ADJOURN

Mayor Marabello declared the Monthly Meeting adjourned at 9:48 p.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Terri K. Hudson". The signature is written in black ink and is positioned above the printed name and title.

Terri K. Hudson, CMC
City Clerk/Recorder